

AUG 21 1996

**Federal Communications Commission  
Office of Secretary**

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MM Docket No. 95-83  
RM-8634

SUPPLEMENT TO COMMENTS OF LEE W. SHUBERT, TRUSTEE

As has been previously noted by KLLL in its earlier filings in this matter, petitioner 21st Century Radio Ventures, Inc. (“21st Century”) has, by its own actions, demonstrated no intention ever to build a radio station in Littlefield, Texas. Its prior commitment to its community of license notwithstanding, 21st Century has sought to manipulate

<sup>2/</sup> To the extent leave is required to bring these subsequent developments to the Commission's attention, KLLL requests such leave. This supplement has been filed promptly after public notice of 21st Century's extension application upon August 12, 1996.

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the reallocation process to transform that facility into a station in the Lubbock area, a region that is already well-served by numerous radio stations.<sup>3/</sup>

Its most recent actions only reinforce that conclusion. With the expiration of its construction permit looming once more, 21st Century has again sought an extension from the Commission. This most recent application reveals that 21st Century has yet to make any progress under its Littlefield permit. 21st Century still has not purchased or even ordered any equipment, and gives no indication that it has secured an appropriate site for the station or otherwise begun the process of seeking construction approval from the local zoning authorities or from state or federal regulatory agencies. 21st Century acknowledges that it has no plans to initiate construction until the Commission decides its petition for reallocation, but nonetheless argues that the delay in construction is “due to circumstances beyond [its] control.” As KLLL has demonstrated in its informal objection to that application, filed contemporaneously herewith, Commission precedent holds otherwise: the consequences of a permittee's own business decisions are not circumstances or reasons beyond its control so as to justify an extension under 47 C.F.R. § 73.3534. See Community Service Telecasters, Inc., 6 FCC Rcd 6026, at ¶ 11 (1991); Reverend. James E. Vaughn, 2 FCC Rcd 2549 (1987). Whatever the merits of the claimed basis for the extension, this most recent application only underscores how the


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<sup>3/</sup> KLLL notes in this respect that the contour map offered in 21st Century's Supplemental Comments purports for the first time to show -- without explanation -- a proposed Wolforth facility located just far enough from Lubbock so as potentially to fall below the 50% threshold set by Headland, 10 FCC Rcd 10352 (1995). The Commission has already found that 21st Century's proposed reallocation in fact met that standard. 21st Century sought no supplemental comment on that question, and the matter is therefore outside the scope of this proceeding.

reallotment process is being used to deprive Littlefield residents of their only FM facility -- by the very applicant that represented to the Commission that it would provide such service.

For the reasons set forth above and in KLLL's earlier comments, the petition to amend Section 73.202(b) of the rules should be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "David Gray".

William R. Richardson, Jr.

David G. Gray

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Counsel for Lee W. Shubert, Trustee

August 21, 1996

CERTIFICATE OF SERVICE

I, David G. Gray, hereby certify that on this 21st day of August, 1996, I caused to be delivered by first class mail, postage prepaid, copies of the foregoing Comments of Lee W. Shubert, Trustee, to the following, at the addresses listed below:

James L. Primm  
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David G. Gray

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\* By Hand.